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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,269	08/22/2003	William R. Walsh	D-3104	9461
33197	7590	05/04/2005	EXAMINER	
STOUT, UXA, BUYAN & MULLINS LLP			MAL, TRIM	
4 VENTURE, SUITE 300			ART UNIT	
IRVINE, CA 92618			PAPER NUMBER	
			3727	
DATE MAILED: 05/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/646,269	Applicant(s) WALSH, WILLIAM R.	
	Examiner Tri M. Mai	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. Claims 1-7, and 9-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

“a front edge” (ln. 10), “back edge” (ln. 12) is a double inclusion of elements which previously recited. Similar issue is with claim 13.

2. Claims 1-5, 10-16, 20, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Capo (4535928).

Capo teaches a box with a first portion 174, 176, 178, having a perimeter defined by opposed longitudinal side edges 108 and 122, a second portion 220+222+224, having a perimeter defined by longitudinal side edges 42+128, a front edge 32, and a back edge 70, a front end wall 22 hingedly couples to a front edge of the second portion, a back end wall coupled to the back edge at line 70, a transverse score line extending across the first portion at 172 and spaced apart from the front and back edges. With respect to the new limitations, the first portion in an assembled condition defines a container having an outer front wall 174, a hinge opposing the outer front wall 172 and defined by the creased transverse score line, and a tapering depth that continually decreases from the outer front wall to the creased score line along line 120. It is noted that the “depth” is broad. There are no structural different between the claimed limitations and the structures shown in Fig. 4. In other words, the claimed only requires a wall (the outer front wall), a hinge formed by the creased transverse scored line, and a dimension showing one side being tapering. Fig. 7 shows line 120 is tapered from the front wall 174 to the hinge line 172.

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Regarding claim 12, at least portions defined by lines 232, 230, 234 are substantially equal in size.

Regarding claim 20, the cover portions are panels 26, 36, 72, and 98, the base comprises of portion 22, 220, 222, 224, 162, 174, 176, 178, and the bottom portions, transverse score lines 170, 172. The base is foldable about the transverse score lines as claimed. Note claim 20 does not limit only a portion of the base foldable into the box as claimed.

3. Claims 9, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pico in view of Anatro (5209392). It would have been obvious to one of ordinary skill in the art to make the container from recycled materials in either Pico as taught by Anatro to protect the environment.

4. Claims 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Vuilleminot (2894673) or Arneson (2361923). Vuilleminot teaches a flat portion having a pair of sidewalls 10, a front end wall 3, a back end wall 6, and score line 7x forming into a container as claimed. With respect to the new limitation, Vuilleminot teaches the tapering depth that continually decreases from the outer front wall to the transverse score line (left 7x). It is noted that line 11 extends continually to the transverse score line in the erected container. The claims does not require the line to intersect with the transverse score line.

Arneson teaches a flat portion having a pair of sidewalls 19, a front end wall 17, a back end wall 12, and score lines b, b' forming into a container as claimed.

Applicant's arguments have been fully considered but they are not persuasive. The amended claims 1-5, 10-16, 20, and 21 do not read over Capo (4535928). As set forth above, the claimed only requires a wall (the outer front wall), a hinge formed by the creased transversed

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scored line, and a dimension showing one side being tapering. Fig. 7 shows line 120 is tapered from the front wall 174 to the hinge line 172.

With respect to the Vuilleminot or Arneson rejection, applicant argues that these container are not adapted for pizza. The examiner submits that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

5. Claims 6, 7, and 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
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